



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 56/07- Golden Crown

Date of Award: 25 July 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **ING SOTHY**

Arbitrator chosen by the worker party: **AN NAN**

Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **Golden Crown Cambodia Co., Ltd.**

Address: Wattanak Park, Building F, Sangakat Chom Chao, Khann Dangkor, Phnom Penh

Telephone: 012 838 094 Fax: N/A

Representative:

1. Mr. Li Er Yong Director of the Company
2. Mr. Te Leng Interpreter

Worker party:

Name: **Local C.CAWDU at Golden Crown Company**

Address: # 6C, Sangkat Tuol Tompoung 1, Khann Chamkarmorn, Phnom Penh

Telephone: 023 210 481/ 012 988 623/ 012 396 069

Representative:

1. Mr. Kao Poeun Officer of C.CAWDU
2. Mr. Ann Saroeun Vice-head of local C.CAWDU at Golden Crown Company
3. Mrs. Trea Sokhim Secretary of local C.CAWDU at Golden Crown Company

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The union demands the company to deduct union contribution fee from members for the local C.CAWDU. The company cannot make the deduction from union members for the union but it does not provide any reason.

2. The workers demand the company to reimburse US\$ 6 for the medical check fee and employment card [fee]. The company cannot provide this based on the company's Internal Work Rules.

3. The workers demand the company not to deduct US\$ 20, US\$ 10, US\$ 5 from workers who are absent from five days to seven days before the monthly pay day. The company, on the other hand, mentions that the company has to deduct US\$ 20, US\$ 10, US\$ 5 from workers who are absent from five days to seven days before the monthly pay day because it wants to prevent workers from being absent after being paid. For the wage the company deducted, the company will give it back to the workers on 15th, after the monthly pay day (the monthly pay day is on 10th).

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 567 KB/AK/VK, dated 25 June 2007 was submitted to the Secretariat of the Arbitration Council on 26 June 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing:

- 09 July 2007 (From 2:00 p.m. to 2:30 p.m.)

- 16 July 2007 (From 2:00 p.m. to 4:00 p.m.)

Procedural issues:

On 3 May 2007 the Department of Labour Disputes received a complaint by C.CAWDU regarding the demand for the company to improve some working conditions. After receipt of the complaint, the Department of Labour Disputes assigned its officer to conciliate

this dispute and the last conciliation was held on 15 June 2007 with a result that 2 of 5 issues were conciliated. The three remaining non-conciliated issues were submitted to the Secretariat of the Arbitration Council on 26 June 2007.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party at the factory to the hearing and conciliation on the three non-conciliated issues on 16 July 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day the Arbitration Council attempted to further the conciliation on the three non-conciliated issues mentioned in the non-conciliation report by the Department of Labour Dispute and, as a result, issue 3 was conciliated and the worker party agreed to withdraw issue 1 from their demand to file further complaint to the court because the Arbitration Council already issued the Arbitral Award on this issue in case 110/06-Golden Crown. Therefore, in this case, the Arbitration Council will consider only issue 2 based on evidence and clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: *N/A*

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Internal Work Rules of Golden Crown Company, registration No. 46 KKBV/AK, dated 04 May 2005

Provided by the worker party:

- Letter dated 05 July 2007 regarding summary statement of labour dispute at Golden Crown Company
- Statute of local C.CAWDU at Golden Crown Company, registration No. 983 KKBV/VK, dated 02 August 2006
- Certificate of union registration of local C.CAWDU at Golden Crown Company, registration No. 983 KKBV/VK, dated 02 August 2006

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

- Report of collective labour dispute resolution at Golden Crown Company, No. 567 KB/AK/VK, by the head of the Department of Labour Dispute, dated 25 June 2007
- Minute of collective labour dispute conciliation, dated 15 June 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 242 K.B/AK/VK/LKA dated 28 June 2007 to invite the worker party to attend the hearing.

- Invitation letter No. 241 K.B/AK/VK/LKA dated 28 June 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 262 K.B/AK/VK/LKA dated 09 July 2007 to invite the worker party to attend the hearing.
- Invitation letter No. 261 K.B/AK/VK/LKA dated 09 July 2007 to invite the employer party to attend the hearing.

FACTS

- Having examined documents submitted to the Arbitration Council
- Having reviewed the minute of the collective labour dispute conciliation
- Having listened to the statements by the worker and the employer parties

The Arbitration Council finds that:

- Golden Crown Garment Factory employs 800 workers.
- Based on the minute of the collective labour dispute conciliation dated 15 March 2007, 500 workers of 800 workers are complainants in this case.
- The local C.CAWDU at Golden Crown Company was established in June 2006 and officially registered by the Ministry of Labour on 02 August 2006. In 2006 the union has a total number of 614 members, but at the hearing date the union has only about 200 members.

Issue [2]: The workers demand for reimbursement of 10,100 riel medical check fee the company deducted from workers

- The worker party and the employer party mention that in mid-2006 the company invited officers from the Ministry of Labour and a Labour Doctor to prepare employment cards and conduct medical checks in the factory and the company deducted US\$ 6 as fees for employment card and medical checks from the workers.

- The workers do not remember how much it was for the employment card fee and how much for the medical check fee.

- The employer promised to provide documents to clarify the price of the employment card fee and medical check fee by 20 July 2007 but the employer did not provide the documents by the deadline.

- However, the workers and the employer did not remember the price for the medical check fee and employment book that the company deducted from the [workers'] wage, thus, the workers [now] request the company to pay 10,100 riel as medical check fee according to the Law that the company deducted back to the workers.

- The worker party mentions that the demand for the medical check fees is for its members only.

- In the hearing the workers mention that they do not demand the company to reimburse them for the employment card, but they demand the medical check fee because this is the employer's obligation as required by the Labour Law. Thus, the Arbitration Council decides that it will not take the point related to employment card for consideration.

- The union promises to provide documents regarding the list of names of union members who are demanding the medical check fee by 20 July 2007, but the worker party did not provide this document by the deadline.

- The employer does not agree because it understands that this is the workers' obligation as stated in the Internal Work Rules.

- The Arbitration Council found that point 3 of the Internal Work Rules states, "Before starting work for the first time, all workers should go to have the medical check at the Labor Medical Department of the Ministry of Labour and Vocational Training.

After starting work, all workers should go to have a periodical medical check at the above mentioned place as determined by Labour Medical Doctor Group."

REASONS FOR DECISION

Issue [2]: The workers demand for reimbursement of 10,100 riel for medical check fees that the company deducted from workers

Article 247(a) of the Labour Law states, "[The Ministry in Charge of Labor shall issue a Prakas to determine] the conditions under which pre-employment, re-employment, periodical, and special physical exams are given."

Article 247(c) (4) states, "the conditions under which employers are required to establish and provide at their expense: the medical exams of workers as stipulated in point a) of this article."

Regarding the demand for medical check fees, in previous arbitral awards, the Arbitration Council notes that "Article 247 (c) of the Labour Law 1997 provides sufficient legal ground to require the employer to pay for workers' medical check fees before accepting the workers to work." (See Arbitral Awards 63-Shine Well, reasons for decision, issue 1; 64/04-Mercury Garment, reasons for decision, issue 1; 78/04-AIA, reasons for decision, issue 1; 98/04-Great Union, reasons for decision, issue 2; 106/04-Suit Way, reasons for decision, issue 1; 107/04-Jacqsintex, reasons for decision, issue 3; 05/05-GHG, reasons for decision, issue 1 and 05/06-W&D, reasons for decision, issue 1).

In previous arbitral awards, the Arbitration Council decides that "The employer has to pay for the expenses and reimburse workers." (See Arbitral Awards 02/03-Chou Hsing, reasons of decision, issue 1; 21/03-Loyal Cambodia, reasons for decision, issue 7; 19/04-

Kbal Koh 2, reason for decision, issue 2; 53/04-Kong Hong, reason for decision, issue 3; 60/04-United Art, reason for decision, issue 2; 63/04-Shine Well, reason for decision, issue 1 and 05/06-W&D, reason for decision, issue 1).

Nonetheless, in the hearing the employer claims that the Internal Work Rules require the worker to have a medical check before starting work. But based on the above-mentioned finding of facts, the Arbitration Council considers that this Internal Work Rules requires all workers to have medical check at the Labor Medical Department before starting work but it does not requires the workers to pay for this medical check.

Therefore, the Arbitration Council considers that the employer has a legal obligation to pay for medical check fees in the amount of 10,100 riel as demanded by the workers.

But in this case, the Arbitration Council found that there is an inter-ministerial Prakas on Fees for Employment Card, Employment Book and Medical Check, dated 21 November 2006. Clause 2 of this Prakas states, "*Fee for medical check which employer must pay is determined as follows:*

- *For each Cambodian worker, it is determined 12,000 riel (twelve thousand riel).*
- *For each foreigner, it is determined 15 USD (fifteen US dollar)."*

This new Ministerial Prakas, determines medical check fee in an amount of 12,000 riel which is higher than the medical check practiced in the past which was only 10,100 riel. However, the Arbitration Council considers that based on the principle of retroactivity of the law, this Prakas cannot be applied for the medical checks conducted before November 2006. Thus, the price for medical check before November 2006 is 10,100 riel.

In this case, the worker party and the employer party did not provide documents about the number of workers whose medical check fee was deducted from their wage. But in the hearing both parties agree that the employer deducted US\$ 6 from their wage for medical checks and employment cards. Therefore, the Arbitration Council considers that the employer should have a clear list, including the amount of the medical check fee deducted from workers in the past.

Thus, the Arbitration Council decides to order the employer to reimburse medical check fees of 10,100 riel it deducted from the workers' wage to those workers who are members of the union who became union members before 03 May 2007 when the union filed the complaint to the Department of Labour Dispute.

Based on the above facts, legal principles, and evidence the Arbitration Council makes its decision as follows:

DECISION

Issue 2: Order the employer to reimburse medical check fees in the amount of 10,100 riel to workers who are members of the union before 03 May 2007 when the Department of Labour Dispute received complaint from C.CAWDU.

Type of Award: Non binding

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **ING SOTHY**

Signature:

Arbitrator chosen by the worker party:

Name: **AN NAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: